



PUBLIC NOTICE

Federal Communications Commission
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FURTHER COMMENT REQUESTED IN INVESTIGATION OF ALASCOM, INC. TARIFF FCC NO. 11

PLEADING CYCLE ESTABLISHED

CC Docket No. 95-182

Comments Due: December 15, 2003
Reply Comments Due: January 9, 2004

This Public Notice seeks further comment on Alascom, Inc.'s (Alascom) Tariff FCC No. 11 for interstate switching and transport services provided to other common carriers within the state of Alaska and between Alaska and the continental United States.

Alascom filed its first Tariff FCC No. 11 on September 22, 1995, and filed annual revisions to Tariff FCC No. 11 each year thereafter.¹ During this period, at least three parties, General Communication, Inc. (GCI), ACS-Long Distance (ACS-LD) (formerly Alaska Telephone Utility-Long Distance), and Alaska Network Services (ANS) (collectively, Petitioners) filed petitions to reject or, in the alternative, suspend some or most of Alascom's tariffs. The Bureau has suspended for one day and set for investigation each of Alascom's annual tariff filings, based on concerns regarding their lawfulness.² Each yearly investigation has been consolidated with the original investigation initiated in 1995. Similarly, each year the Bureau imposed an accounting order requiring Alascom to keep accurate account of all revenues collected pursuant to Tariff FCC No. 11 in the event that the Commission ultimately determines that refunds are required.³ The investigation is still pending, and the accounting orders are still

¹ See, e.g., Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790 (filed Sept. 11, 1995).

² Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995); Transmittal No. 807, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996); Transmittal No. 852, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); Transmittal No. 921, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); Transmittal Nos. 921, 937, 941 and 942, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); Transmittal No. 993, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); Transmittal No. 1088, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); Transmittal No. 1184, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); Transmittal No. 1260, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001).

³ See, e.g., Alascom, Inc., Tariff FCC No. 11, Transmittal No. 807, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996).

in effect. The next step in the investigation is to issue a designation order. Events occurring since the initiation of the investigation may have affected the positions of the parties. Such events include changes in ownership of certain Petitioners, an additional Bureau order regarding Alascom's Cost Allocation Plan (CAP),⁴ and changes in the regulation of telecommunications services in Alaska. An example of such a regulatory change is the Commission's recent repeal of the Alaska "bush policy," which prevented construction of duplicate satellite earth station facilities for providing telecommunications services in certain small, remote Alaska communities.⁵ In order to prepare a designation order, the Bureau now asks the parties to state their positions with respect to Alascom's Tariff FCC No. 11, indicating whether these ensuing events have affected their positions. Therefore, we request Petitioners and any other party desiring to do so to state and support their positions with respect to Alascom's Tariff FCC No. 11. We also provide an opportunity for Alascom or any other party desiring to do so to reply to these statements.

BACKGROUND

In 1994 the Commission established a new market structure for telecommunications services in Alaska designed to end monopoly service and "promote more competition, open entry, and improve efficiency"⁶ This *Market Structure Order* required Alascom to offer "common carrier" services on a non-discriminatory basis at rates that reflect the costs of the services.⁷ These Alascom common carrier services are defined as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier."⁸ The *Market Structure Order* further required Alascom to establish two geographic rate zones and to allocate the costs of providing service to these two zones pursuant to a cost allocation plan (CAP) to be developed by Alascom and approved by the Commission.⁹ The *Market Structure Order* described the two geographic rate zones as "locations subject to facilities competition (non-Bush) and . . . locations where Alascom has a facilities monopoly (Bush)."¹⁰ The Commission adopted the two-rate-zone and CAP requirements because the cost of providing

⁴ *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, AAD 94-119, Memorandum Opinion and Order on Reconsideration and Order Approving Cost Allocation Plan, 12 FCC Rcd 1991 (Com. Car. Bur. 1997).

⁵ *Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, IB Docket No. 02-30, RM No. 7246, Report and Order, FCC 03-197 (rel. Aug. 12, 2003).

⁶ *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) (*Market Structure Order*). See also *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Final Recommended Decision, 9 FCC Rcd 2197 (Jt. Bd. 1993) (*Final Recommended Decision*).

⁷ *Market Structure Order*, 9 FCC Rcd at 3023.

⁸ *Id.* at 3023, n.5.

⁹ *Id.* at 3023.

¹⁰ *Id.*

service to bush areas was substantially higher than the cost of providing service to non-bush areas, thus providing Alascom a possible incentive to discriminate against competitors or cross-subsidize competitive, non-bush services with revenues from non-competitive bush services.¹¹ Finally, the *Market Structure Order* required Alascom to revise its common carrier services tariff annually to reflect current costs.¹²

After requiring certain revisions, the Bureau approved Alascom's CAP in 1995.¹³ Alascom filed its first common carrier services tariff with rates produced by the CAP, Tariff FCC No. 11, in 1995. Petitioners challenged the tariff, raising questions regarding its lawfulness, and, therefore, the Bureau suspended the tariff, imposed an accounting order, and instituted an investigation.¹⁴ The Bureau has similarly suspended all of Alascom's subsequent annual Tariff FCC No. 11 revisions, imposed accounting orders, instituted investigations, and incorporated each year's investigation into the investigation of Alascom's original Tariff FCC No. 11.¹⁵ This investigation is still pending. On January 7, 2003, Alascom filed a petition seeking a waiver of its obligation to file a new Tariff FCC No. 11 for 2003, which had been due on November 27, 2002.¹⁶ Alascom contended in its waiver petition, among other things, that the market for telecommunications services in Alaska had become sufficiently competitive that a tariff for its common carrier services was no longer needed to protect competition.¹⁷ On August 13, 2003, the Bureau denied Alascom's petition and required Alascom to file its annual tariff revisions by September 26, 2003.¹⁸ The Bureau stated that it would not make determinations regarding broad issues such as the state of competition among providers of telecommunications services in Alaska in response to a tariff waiver petition, noting that Alascom had filed a separate petition to eliminate all of the conditions imposed on it by the *Market Structure Order*.¹⁹

¹¹ *Id.* at 3023. See also *Final Recommended Decision*, 9 FCC Rcd at 2205-06.

¹² *Market Structure Order*, 9 FCC Rcd at 3027. Current Commission rules require Alascom to file its annual tariff revisions, to become effective on the first day of each calendar year, on at least 35 days' notice. 47 C.F.R. § 61.58(e)(3).

¹³ *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, Order, 10 FCC Rcd 9823 (Com. Car. Bur. 1995).

¹⁴ *Alascom, Inc. Tariff FCC No. 11, Transmittal No. 790*, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995); *Alascom, Inc. Tariff FCC No. 11, Transmittal No. 807*, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996).

¹⁵ *Transmittal No. 852*, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); *Transmittal No. 921*, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); *Transmittal Nos. 921, 937, 941 and 942*, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); *Transmittal No. 993*, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); *Transmittal No. 1088*, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); *Transmittal No. 1184*, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); *Transmittal No. 1260*, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001).

¹⁶ *Alascom Petition for Waiver of Commission's Rules Regarding its Annual Tariff FCC No. 11*, WC Docket No. 03-18 (filed Jan. 7, 2003).

¹⁷ *Id.* at 5-7.

¹⁸ *Alascom Petition for Waiver of Commission's Rules Regarding its Annual Tariff FCC No. 11*, WC Docket No. 03-18, Order, DA 03-2649 (WCB Aug. 13, 2003).

¹⁹ *Id.* at 7. See also *AT&T Corp. and Alascom Inc. Petition for Elimination of Conditions*, CC Docket No. 00-46 (filed Mar. 10, 2000) (*Petition for Elimination of Conditions*).

Alascom duly filed its annual revision to its Tariff FCC No. 11 on September 26, 2003.²⁰ GCI filed a petition to suspend and investigate this tariff, to which Alascom filed a reply.²¹ In a separate order, we suspended this tariff for one day, imposed an accounting order, set it for investigation, and consolidated the investigation of this tariff with the overall investigation of all of Alascom's annual Tariff FCC No. 11 filings.²²

CURRENT PROCEEDING

The Bureau is inviting comment in this tariff investigation now in order to prepare an order designating the issues to be investigated and directing Alascom to provide additional information needed to complete the investigation. Therefore, we request each interested party to prepare a complete statement of its position with respect to all issues that it contends demonstrate that Alascom's Tariff FCC No. 11 is unlawful. We request these statements because, in the time that has elapsed since Alascom filed its first Tariff FCC No. 11, certain of the parties that challenged Alascom's early tariffs have changed ownership, the Bureau has issued an additional order regarding Alascom's CAP, and regulations concerning telecommunications services in Alaska have changed. We seek to determine whether any of these ensuing developments have resulted in any changes to the parties' positions. We also ask any parties challenging Alascom's Tariff FCC No. 11 to describe in detail the additional information, including cost support, that is necessary to enable the Commission to complete the investigation and determine whether or not Alascom's tariffs are lawful. We direct the parties in their comments and reply comments to address only those issues relating to whether Alascom's tariffs are lawful, rather than the need for a tariff due to changes in competitive conditions in Alaska, which we will address in our consideration of Alascom's *Petition for Elimination of Conditions*.²³ For the convenience of the parties and the Bureau, we have scheduled the comment date for this Public Notice to coincide with the deadline for filing petitions to reject or, in the alternative, suspend and investigate, Alascom's Tariff FCC No. 11 for 2004, which is due to be filed on November 28, 2003. Because we must make a determination regarding the potential lawfulness or unlawfulness of this tariff prior to January 1, 2004, however, Alascom must file any reply to any such petitions by December 22, 2003. If Alascom or any other party desires to respond to any broader tariff issues raised in any comments filed in response to this Public Notice, they may file reply comments by January 9, 2004.

FILING PROCEDURES

Comments in response to this Public Notice are due **December 15, 2003**. Reply Comments are due **January 9, 2004**. When filing comments, please reference CC Docket No. 95-182. An original and four copies of all comments should be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC

²⁰ Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1278 (filed Sept. 26, 2003).

²¹ Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1278, Petition of GCI to Suspend and Investigate (filed Oct. 10, 2003); Opposition of Alascom to Petition of GCI to Suspend and Investigate (filed Oct. 23, 2003).

²² *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1278*, CC Docket No. 95-182, Order, DA 03-3454 (WCB Oct. 30, 2003).

²³ See n.19, *supra*.

20554. A courtesy copy should be addressed to Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A225, Washington, D.C. 20554, and e-mailed to julie.saulnier@fcc.gov. A courtesy copy should also be addressed to Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile 202-863-2898, or sent via e-mail to qualexint@aol.com. Parties also are strongly encouraged to submit their comments via the Internet through the Electronic Comment Filing System at <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 95-182. Parties may also submit an electronic comment via Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form." A sample form and directions will be sent in reply.

Interested parties who wish to file comments via hand-delivery are also notified that the Commission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m., via its contractor, Natek, Inc., located at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. **The Commission no longer accepts these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743.** Please note that all hand deliveries must be held together with rubber bands or fasteners, and envelopes must be disposed of before entering the building. In addition, this is a reminder that the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12th Street, SW, Washington, DC 20554. Messenger-delivered documents (e.g., FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. USPS First-Class, Express, and Priority Mail should be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The following chart summarizes this information:

TYPE OF DELIVERY	PROPER DELIVERY ADDRESS
Hand-delivered paper filings	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (Weekdays - 8:00 a.m. to 7:00 p.m.)
Messenger-delivered documents (e.g., FedEx), including documents sent by overnight mail (this type excludes USPS Express and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (Weekdays - 8:00 a.m. to 5:30 p.m.)
USPS First-Class, Express, and Priority Mail	445 12 th Street, SW Washington, DC 20554

***Ex Parte* Requirements**

This Public Notice is designated a permit-but-disclose proceeding and is subject to the requirements of section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the

presentations must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²⁴ Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

Interested parties should address any memoranda summarizing oral *ex parte* presentations or written *ex parte* presentations in this proceeding to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554. Parties making either oral or written *ex parte* presentations also should address copies of memoranda summarizing any oral *ex parte* presentations or any written *ex parte* presentations to the Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A222, Washington, D.C. 20554 and e-mail copies to julie.saulnier@fcc.gov. A courtesy copy also should be addressed to Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893., facsimile (202)-863-2898, or sent via e-mail to qualexint@aol.com. Parties also are strongly encouraged to file copies of memoranda summarizing oral *ex parte* presentations or any written *ex parte* presentations via the Internet through the Electronic Comment Filing System at <http://www.fcc.gov/cgb/ecfs/>.

For further information regarding this proceeding contact Julie Saulnier, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1530.

²⁴ See 47 C.F.R. §1.1206(b)(2), as revised.